

Docket No. 05-00588-02/AB-349U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Appl. No.: 10/622,227
Conf. No.: 4651Applicant: Andres M. Lozano
Filed: July 18, 2003
TC/A.U.: 3739
Examiner: Rosalind Stacie Rollins

Title: Brain Stimulation Lead used for Lesioning

Docket No.: 05-00588-02/AB-349U
Customer No.: 23845

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on this date: November 9, 2006Printed Name: Marcia GoldsteinSignature: Marcia GoldsteinDate: 11/9/2006Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450Declaration of Andres M. Lozano, Under 37 CFR §1.132

I, Andres M. Lozano, declare as follows, under penalty of perjury.

1. I hold a B.Sc. degree (cum laude) in Cell and Molecular Biology, an M.D. (magna cum laude), and a B.Med.Sc. degree in Biochemistry from University of Ottawa, awarded in 1979, 1983 and 1983, respectively. I also hold a Ph.D. in Experimental Medicine and Neurobiology from McGill University in Montreal, Quebec, awarded in 1989. Between 1983 and 1990, I performed a Surgical Internship, three Post-doctoral Fellowships, and a Neurosurgery Residency.
2. From 1991-1997, I served as Clinician Scientist for the Medical Research Council of Canada at the Samuel Lunenfeld Research Institute/Mount Sinai Hospital in Toronto, Ontario. In 1996, I was appointed Head of the Epilepsy, Stereotactic and Functional Neurosurgery Committee for the University of Toronto. Since 1999, I have served as the Head of Applied and Interventional Research as well as Senior Scientist for the Toronto Western Hospital Research Institute. In 1999, I also became Professor and RR Tasker Chair in Stereotactic and Functional Neurosurgery for the University of Toronto. In 2005, I was appointed Canada Research Chair in Neurosciences (Tier I). Most recently, In 2006, I was appointed Director of the Fellowship

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Program, Division of Neurosurgery, for University of Toronto and the Chair of the Appointments Committee for Toronto Western Hospital Research Institute. I am President of the World Society for Stereotactic and Functional Neurosurgery, and a member and past President of the American Society for Stereotactic and Functional Neurosurgery. I serve on scientific advisory boards for the American Association of Neurological Surgeons, the Michael J. Fox Foundation for Parkinson's Research, the Dystonia Medical Research Foundation, the Gene Therapy for Parkinson's Disease Study Group, and Neuroscience Canada. I serve as Chair for the Joint Section on Stereotactic and Functional Neurosurgery of the Congress of Neurological Surgeons and the American Association of Neurological Surgeons, the Neurosurgery Committee of the Movement Disorder Society, and the Stereotactic & Functional Neurosurgery Committee of the World Federation of Neurosurgical Societies. I am a member and ad hoc reviewer for multiple grant review panels and an editorial board member and ad hoc reviewer for numerous journals.

3. I affirm that I am the sole inventor of the pending claims in the present application.

4. The present application is owned by Functional Neuroscience, Inc. (FNI), and is exclusively licensed to Advanced Bionics Corporation. I am the President of FNI. As the sole Inventor of the present application and as the President of FNI, I have appointed the attorneys at Advanced Bionics Corporation to prosecute this application on my behalf and for FNI.

5. I have reviewed the U.S. Patent Office action dated August 24, 2006, for the present patent application. I noted the following statement therein:

Claims 23-27, 29-41 are rejected under 35 U.S.C. 102(a) as being anticipated by Oh et al., "Deep Brain Stimulator Electrodes Used for Lesioning: Proof of Principle" Neurosurgery, Vol. 49, No. 2 (August 2000 [sic]) pages 363-369.

Oh et al. teach a method for creating a lesion in a patient's body comprising implanting a lead in a patient's brain; electrically connecting the lead to an external RF generator; disconnecting the lead from the external RF generator; waiting at least one week (page 365 and the conclusion on page 367); evaluating the results of the lesion; and repeating steps b through f at least once to create a progressive, graduated lesion.

6. I affirm that I am co-author of the journal article Oh et al., "Deep Brain Stimulator Electrodes Used for Lesioning: Proof of Principle" Neurosurgery, Vol. 49, No. 2 (August 2001) pages 363-369.

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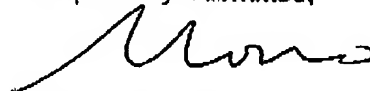
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7. I affirm that the Oh et al. article discloses the subject matter presently claimed in above-identified patent application.
8. I affirm that I am the sole inventor of the subject matter in the Oh et al. article cited by the Examiner in the rejection against the pending claims of the present application. The other authors of the Oh et al. article were working under my direction.
9. Therefore, the inventorship of the present application is correct in that the Oh et al. article discloses subject matter derived from me, rather than invented by all the authors of the article, notwithstanding the authorship of the article.

As this declaration is presented in lieu of an affidavit executed under oath, it is executed with knowledge that "willful false statements and the like are punishable by fine or imprisonment, or both" under Section 1001 of Title 18 of the United States Code and any such willful false statements and the like may jeopardize the validity of the present patent application or any patent issuing thereon.

All statements herein made of my own knowledge are true and all statements herein made on information and belief are believed to be true.

Respectfully Submitted,



Andres M. Lozano, M.D., Ph.D.

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Toronto Western Hospital Research Institute
President, World Society for Stereotactic and
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